

NOV 15 1984

ALEXANDER L. STEVAS
CLERK

No. 83-2030 (5)

In the Supreme Court of the United StatesOCTOBER TERM, 1984

THE BOARD OF EDUCATION OF THE CITY OF
OKLAHOMA CITY, STATE OF OKLAHOMA,
Appellant,

v.

THE NATIONAL GAY TASK FORCE,
Appellee.

On Appeal from the United States Court of Appeals,
Tenth Circuit

JOINT APPENDIX

LARRY LEWIS

Suite 410
4001 N. Lincoln
Oklahoma City, Oklahoma 73105
(405) 521-1276

*Counsel of Record for Appellant***LAURENCE H. TRIBE**

Harvard University Law School
Griswold Hall 307
Cambridge, Massachusetts 02138
(617) 495-4621

Counsel of Record for Appellee

APPEAL DOCKETED JUNE 9, 1984
PROBABLE JURISDICTION NOTED OCTOBER 1, 1984

15 pp

No. 83-2030

In the
Supreme Court of the United States
OCTOBER TERM, 1984

THE BOARD OF EDUCATION OF THE CITY OF
OKLAHOMA CITY, STATE OF OKLAHOMA,
Appellant,

v.

THE NATIONAL GAY TASK FORCE,
Appellee.

On Appeal from the United States Court of Appeals,
Tenth Circuit

JOINT APPENDIX

TABLE OF CONTENTS

| | PAGE |
|---|------|
| Statement as to not reprinting Opinions of the District Court and Court of Appeals, which were included in the Jurisdictional Statement previously filed with this Court | ii |
| Relevant Docket Entries | 1 |
| Complaint | 3 |
| Answer | 9 |
| State Statute Found to be Unconstitutional | 11 |

**STATEMENT AS TO NOT REPRINTING
OPINIONS OF DISTRICT COURT
AND COURT OF APPEALS**

The parties have agreed that the following opinions, decisions, judgments and orders have been omitted in printing this Appendix because they appear on the following pages in the Appendix to the Jurisdictional Statement filed with this Court on June 9, 1984:

Opinion of the District Court for the Western District of Oklahoma, dated June 29, 1982 _____ 1b

Opinion of the Court of Appeals for the Tenth Circuit, dated March 14, 1984 _____ 1a

RELEVANT DOCKET ENTRIES

United States District Court for the Western District of Oklahoma, No. CIV-80-1174-E:

| | |
|----------|--|
| 10-14-80 | Complaint filed |
| 11-20-80 | Defendant filed motion to dismiss and brief |
| 1- 8-81 | Plaintiff filed brief in opposition to motion to dismiss |
| 2-12-81 | Arguments heard on defendant's motion to dismiss, Court takes motion under advisement |
| 4- 1-81 | Order granting Commission on Freedom of Speech leave to file amicus curiae brief on behalf of plaintiff |
| 4-13-81 | Withdrawal of Stan Easter as plaintiff. |
| 8- 4-81 | Order that defendant's motion to dismiss is overruled |
| 9- 9-81 | Answer filed |
| 11-18-81 | Motion and brief by plaintiff for summary judgment filed |
| 11-19-81 | Pretrial |
| 11-25-81 | Pretrial |
| 11-25-81 | Stipulation made by plaintiff and defendant that there is no genuine issue as to any material fact, that there is no necessity or desirability of an evidentiary hearing or the taking of evidence, and that the Court may decide the issues presented by the pleadings as a matter of law |
| 12- 9-81 | Brief of amicus curiae Commission on Freedom of Speech filed |
| 2-16-82 | Brief by defendant in opposition to plaintiff's motion for summary judgment filed |
| 4-21-82 | Brief by plaintiff in reply to defendant's brief in opposition to plaintiff's motion for summary judgment filed |

6-29-82 Memorandum Opinion and Order that prayer of plaintiff for order to declare 70 O.S. Sec. 6-103.15 unconstitutional is denied. Judgment entered in favor of defendant and against the plaintiff

7-26-82 Notice of Appeal filed by plaintiff

8-25-82 Copy of clerk's letter transmitting record on appeal to Court of Appeals

Court of Appeals for the Tenth Circuit, No. 82-1912:

7-29-82 Case docketed

8- 7-82 Docketing statement filed

8-27-82 Record on appeal filed

9-13-82 Motion of Lambda Legal Defense and Education Fund, Inc. to file amicus brief on behalf of Task Force granted

10-19-82 Appellant's brief filed

11- 2-82 Motion of Speech Communication Association to file amicus brief on behalf of Task Force granted. Brief filed.

11- 4-82 Appellee's brief filed

11-18-82 Brief of amicus Lambda filed

11-22-82 Letters consenting to amicus brief of National Gay and Lesbian Rights Project of ACLU filed. Amicus brief filed.

11-20-82 Appellant's reply brief filed

7-22-83 Hearing for oral argument set

9- 8-83 Appellant's additional authority filed

9-12-83 Case argued and submitted

3-14-84 Opinion of majority and dissent signed, filed and published with Judgment reversed

4- 5-84 Mandate issued to district court

5-11-84 Notice of Appeal to Supreme Court filed

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

[Filed Oct. 14, 1980]

THE NATIONAL GAY TASK FORCE,)
and STAN EASTER, and on behalf of)
all teachers and principals prospectively)
and presently employed by the Board of)
Education of the City of Oklahoma City,)
State of Oklahoma, and who are similarly) CIV-80-
situated,) 1174-D
Plaintiffs,)
vs.)
THE BOARD OF EDUCATION OF THE)
CITY OF OKLAHOMA CITY, STATE)
OF OKLAHOMA,)
Defendant.)

COMPLAINT

COME NOW the plaintiffs, and for cause of action against the defendant, they allege and state as follows:

JURISDICTION

1. This is an action for declaratory judgment pursuant to Title 28, United States Code, Section 2201, for the purpose of determining a question of actual controversy between the parties as hereinafter more fully appears.

2. Jurisdiction of this action is based on Title 28, United States Code, Section 1331, and the First Amendment, as well as Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States of America. The amount of controversy exceeds \$10,000.00, exclusive of interest and costs.

3. Declaratory judgment is sought for there is at present and currently existing between parties hereto an actual justiciable controversy in respect to which plaintiffs are entitled to have a declaration of their rights and further, they are entitled to immediate relief including a mandatory injunction because of the facts and circumstances hereinafter set out.

PARTIES

4. The National Gay Task Force is a corporation organized and existing under the laws of the State of New York. Its membership consists of homosexual male and female persons throughout the United States and includes both present and prospective teachers and principals of the Oklahoma City School District, which members desire to discuss the subject of homosexuality within such school district, but fear to do so because of the enactment of 70 O.S. §6-103.15. Such members wish to advocate civil and constitutional rights for homosexual persons but fear and are inhibited by their public and private expression of opinion on homosexuality, and on civil liberties for homosexuals because of the possibility of dismissal and/or foreclosure of future employment in the Oklahoma City School District.

5. The plaintiff Stan Easter, is a citizen of the State of Oklahoma, a taxpayer, a resident of the City of Oklahoma City, and a credentialed and duly licensed teacher within the Oklahoma state school system. The plaintiff, Easter, is an individual who is a homosexual person who desires to associate with other homosexual persons, and who desires that the subject of homosexuality be dismissed in the public school system in an open and unbiased fashion, and not according to a prejudged, state-imposed ideology. He personally desires to advocate publicly civil and constitutional rights for all citizens, including homosexual persons, but fears to do so because of the enactment of 70 O.S. §6-103.15. The plaintiff Easter is inhibited in his public

and private expression of opinion on homosexuality and on civil liberties for homosexuals because of the possibility of dismissal or refusal of employment pursuant to 70 O.S. §6-103.15.

CLASS ACTION

6. The plaintiffs, pursuant to Rule 23, Federal Rules of Civil Procedure, bring this action on their own behalf and on behalf of all other teachers and principals employed or prospectively employed by the Oklahoma City School District under the control of the Board of Education of the City of Oklahoma City who are similarly situated. Plaintiffs allege that there are common questions of law and fact affecting the rights of the plaintiffs and the rights of all those similarly situated. Plaintiffs allege that the class is so numerous that joinder of all members as parties plaintiff is impracticable, that the claims of the representative parties are typical of the claims of the class, and the representative parties will fairly and adequately protect the interests of the class.

7. The defendant, Board of Education of the City of Oklahoma City, State of Oklahoma, is vested by statute (70 O.S. § 6-103) with the enforcement and compliance with 70 O.S. § 6-103.15.

CLAIM FOR RELIEF

8. The defendant by statute is required to enforce 70 O.S. § 6-103.15 and plaintiffs' contention that said statute is null and void and constitutionally impermissible creates an actual controversy within the jurisdiction of this court. Plaintiffs have no adequate remedy at law and therefore declaratory and injunctive relief is proper and will adequately and effectively adjudicate the rights of the parties.

9. The promulgation of 70 O.S. § 6-103.15 and the threatened enforcement thereof have caused and will cause plaintiffs unusual hardship and irreparable injury as heretofore set out in Paragraphs 1-7 of the allegations of the parties hereto, and they allege:

Section 6-103.15, Title 70 of the Oklahoma Code is patently unconstitutional on its face under the Oklahoma and Federal Constitutions, and is wholly void and inoperative. In particular:

- (a) The statute punishes constitutionally protected speech and selects certain speech for imposition of sanctions based on its contents.
- (b) It fails to give fair notice of prohibited conduct.
- (c) It does not with sufficient clarity draw a line between protected and unprotected speech; hence it is constitutionally vague and overbroad.
- (d) The statute sets up a non-neutral state ideology and compels school employees to indicate tacit approval thereof, in violation of their liberty of conscience.
- (e) The statute punishes constitutionally protected assembly and association and creates a "chilling effect" inhibiting all teachers and teachers' aides from participating in groups, political campaigns, or association with anyone who advocates rights for homosexuals.
- (f) The statute singles out homosexuals and any teacher associating with them for discriminatory treatment and invites a campaign of harassment against them, and discriminates against a suspect class, homosexuals, in the area of public employment, in violation of constitutional principles of equal protection
- (g) The statute violates the due process and privacy rights of those subject to its sanctions and is therefore in violation of Article II, §§ 2.3 and 22 of the Constitution of the State of Oklahoma, and of the First, Fifth, Ninth, Tenth and Fourteenth Amendments to the Constitution of the United States of America.

10. Unless otherwise ordered by this Court, defendant is required to and will enforce 70 O.S. § 6-103.15 and thereby subject plaintiffs, and many other present and prospective teachers, to fitness hearings, dismissals and refusals to hire, inhibiting them and deterring them from exercising their constitutional rights of speech and association.

11. A copy of the Statute is attached hereto, marked Exhibit "A", and made a part hereof by this reference.

WHEREFORE, plaintiffs pray that this Court:

- (a) Enter a Declaratory Judgment declaring that 70 O.S. § 6-103.15 is void and of no effect, unconstitutional, and without force by law; and
- (b) Issue a Preliminary Injunction, restraining defendants, their officers, employees, agents and servants from enforcing this statute, pending a final action/determination of the issues stated herein; and
- (c) Issue a Permanent Injunction, restraining and enjoining said defendant, its officers, employees, agents and servants from exercising or enforcing any portion of this statute; and
- (d) Award plaintiffs' costs, disbursement, and reasonable attorney's fees; and
- (e) Grant such other and further relief as the Court may deem just and proper, and issue all orders necessary to implement the relief ordered by the Court.

DATED this 14th day of October, 1980.

Donald C. Knutson of the
Gay Rights Advocates

William B. Rogers of the
American Civil Liberties
Union of Oklahoma

Attorneys for plaintiffs

EXHIBIT "A"

70 § 6-103.15 SCHOOLS

§ 6-103.15 *Homosexual conduct or activity*

A. As used in this section:

1. "Public homosexual activity" means the commission of an act defined in Section 886 of Title 21 of the Oklahoma Statutes, if such act is:

- a. committed with a person of the same sex, and
- b. indiscreet and not practiced in private;

2. "Public homosexual conduct" means advocating, soliciting, imposing, encouraging or promoting public or private homosexual activity in a manner that creates a substantial risk that such conduct will come to the attention of school children or school employees; and

3. "Teacher" means a person as defined in Section 1-116 of Title 70 of the Oklahoma Statutes.

B. In addition to any ground set forth in Section 6-103 of Title 70 of the Oklahoma Statutes, a teacher, student teacher or a teachers' aide may be refused employment, or reemployment, dismissed, or suspended after a finding that the teacher or teachers' aide has:

1. Engaged in public homosexual conduct or activity; and
2. Has been rendered unfit, because of such conduct or activity, to hold a position as a teacher, student teacher or teachers' aide.

C. The following factors shall be considered in making the determination whether the teacher, student teacher or teachers' aide has been rendered unfit for his position:

1. The likelihood that the activity or conduct may adversely affect students or school employees;

2. The proximity in time or place of the activity or conduct to the teacher's, student teacher's or teachers' aide's official duties;

3. Any extenuating or aggravating circumstances; and

4. Whether the conduct or activity is of a repeated or continuing nature which tends to encourage or dispose school children toward similar conduct or activity.
Added by Laws 1978, c. 189, § 1.

[Caption and title omitted]

ANSWER

COMES NOW the Defendant, the Board of Education of the City of Oklahoma City, and in answer to the Complaint of the Plaintiff, states:

1. The Defendant denies the allegation contained in Paragraph One of Plaintiff's Complaint to the effect that Plaintiff presents a question of actual controversy between the parties.

2. The Defendant denies the allegation contained in Paragraph Two of Plaintiff's Complaint as to jurisdiction of this Court.

3. The Defendant denies the allegations contained in Paragraph Three of Plaintiff's Complaint.

4. The Defendant neither admits nor denies the allegations of Paragraph Four of Plaintiff's Complaint as to Plaintiff's existence, membership, or the desires of its members because the Defendant has no knowledge thereof. The Defendant neither admits nor denies the allegation that Plaintiff's members are inhibited in their expressions, but asserts that it engages in no practice of suppression of freedom of expression among its employees.

5. The Defendant neither admits nor denies the allegations of Paragraph Five of Plaintiff's Complaint because the former Plaintiff Easter has withdrawn from this action.

6. The Defendant denies in Plaintiff's Paragraph Six all allegations to the effect that this lawsuit may be properly brought as a class action. In particular, the Defendant denies that there are common questions of law and fact; that joinder of members of the putative class is impracticable; that there exists numerosity, typicality or commonality of claims; or that the purported representative will fairly and adequately protect the interests of the class.

7. The Defendant admits the allegation contained in Plaintiff's Paragraph Seven.

8. The Defendant denies the allegations contained in Paragraph Eight except to admit that the Defendant is required to enforce the challenged statute, 70 Okla. Stats. Sec. 6-103.15.

9. The Defendant denies the allegations contained in Paragraph Nine of Plaintiff's Complaint.

10. The Defendant again admits it is required to enforce 70 Okla. Stats. Sec. 6-103.15, but denies that such enforcement will subject the putative class of plaintiff's and many other present and prospective teachers to fitness hearings, dismissals and refusals to hire or inhibit and deter them from exercising their constitutional rights of speech and association.

11. The Defendant admits the accuracy of Plaintiff's Exhibit "A" as incorporated into the Complaint by reference.

WHEREFORE, the Defendant prays that this Court deny all manner of reilef sought by the Plaintiffs, whether declaratory, injunctive or otherwise and that Defendant's

costs, disbursements and reasonable attorney's fees be awarded to Plaintiff.

GROVES, BLEAKLEY & TAGUE
ERIC J. GROVES
ATTORNEYS FOR DEFENDANT

[Certificate of Mailing omitted this printing]

THE STATE STATUTE FOUND TO BE
FACIALLY UNCONSTITUTIONAL

70 Okla. Stat. Sec. 6-103.15:

A. As used in this section:

1. "Public homosexual activity" means the commission of an act defined in Section 886 of Title 21 of the Oklahoma Statutes, if such act is:
 - a. committed with a person of the same sex, and
 - b. indiscreet and not practiced in private;
2. "Public homosexual conduct" means advocating, soliciting, imposing, encouraging or promoting public or private homosexual activity in a manner that creates a substantial risk that such conduct will come to the attention of school children or school employees; and
3. "Teacher" means a person as defined in Section 1-116 of Title 70 of the Oklahoma Statutes.

B. In addition to any ground set forth in Section 6-103 of Title 70 of the Oklahoma Statutes, a teacher, student teacher or a teachers' aide may be refused employment, or reemployment, dismissed, or suspended after a finding that the teacher or teachers' aide has:

1. Engaged in public homosexual conduct or activity;
 2. Has been rendered unfit, because of such conduct or activity, to hold a position as a teacher, student teacher or teachers' aide.
- C. The following factors will be considered in making the determination whether the teacher, student teacher or teachers' aide has been rendered unfit for his position:
1. The likelihood that the activity or conduct may adversely affect students or school employees;
 2. The proximity in time or place the activity or conduct to the teacher's, student teacher's or teachers' aide's official duties.
 3. Any extenuating or aggravating circumstances; and,
 4. Whether the conduct or activity is of a repeated or continuing nature which tends to encourage or dispose school children toward similar conduct or activity.
-